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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
SEPTEMBER 12, 2005

MEMBERS PRESENT: MICHAEL REIS
KATHLEEN LOCEY
KIMBERLY GANN
HOWARD BROWN

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN
LEN MCDONALD
STEPHEN RIVERA

REGULAR MEETING

MR. REIS: I'd like to call the September 12, 2005
meeting to order.

MOTION_TO_ACCEPT_MINUTES_OF_7/25/05,_8/8/05_AND_8/22/05

MR. REIS: I hope you've all had an opportunity to look
at the minutes, motion to accept the minutes of July
25, August 8 and August 22.

MS. GANN: So moved.

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MS. LOCEY: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

PRELIMINARY_MEETINGS: _____

MT._AIRY_ESTATES_(05-55) _____

MR. REIS: Mt. Airy Estates. When you come up, folks, speak loud enough so Fran our stenographer can hear your comments. First preliminary meeting is Mt. Airy Estates, 2029 Independence Drive. Request for 17 ft. rear yard setback for proposed single family house at 2029 Independence Drive. Tell us your name.

MR. ROSENZWEIG: Good evening, my name is Marvin Rosenzweig, I'm representing Mt. Airy Estates.

MR. REIS: Tell us what you want to do, Marvin. If I may interrupt you for a moment in New Windsor, we have preliminary meetings. For those folks that are here for the preliminary, state your purpose and what you hope to accomplish, if there's anything that we need we'll be able to tell you for your public hearing, so it's a two step process. Go ahead.

MR. ROSENZWEIG: Okay, I'm requesting a 17 foot variance, I'm trying to keep all the houses in the development pretty much the same and on this particular corner lot a smaller house would not fit into the envelope so I'm requesting that I put a similar house to the other ones that I have in the neighborhood into the smaller envelope. Just on the side the last time I was here for a variance which might have been a couple years ago, I was told to try to keep get all the lots together that might require a variance and I think we're down to just two and I have, they're both on for tonight.

MR. REIS: Great. Is one of the issues, Michael, the fact that he's on a corner lot?

MR. BABCOCK: No, actually the rear yard is 30 feet, yeah, I guess if it was not a corner lot, it would be

better because he can move it forward which he would still require a variance, Mr. Chairman, just wouldn't be as large.

MR. REIS: Thank you, Mike. Okay, how large is the home you expect to build?

MR. ROSENZWEIG: About 2,200 square feet.

MR. REIS: So it's not overly large for that space.

MR. ROSENZWEIG: No, that's one of the smaller of our houses.

MR. REIS: You're not conflicting with any easements or right-of-ways?

MR. ROSENZWEIG: No.

MR. BABCOCK: Mr. Chairman, maybe we can just verify with the applicant that if there is a rear deck, is there going to be a rear deck?

MR. ROSENZWEIG: Same as we do, just to get out of the house.

MR. BABCOCK: So it would not be involved in the setback, you would stay within the 13 feet or it's just a small porch?

MR. ROSENZWEIG: Just the porch to get out, just the stairs to get out.

MR. REIS: We don't need to increase that variance, Mike?

MR. BABCOCK: No.

MR. KRIEGER: But if he comes back they always come back for a deck.

MS. GANN: Would the front of the house facing what's here on this picture?

MR. ROSENZWEIG: The front of the house would be on Independence.

MS. GANN: According to this picture where would it be?

MR. ROSENZWEIG: It would be, the front would be here, the driveway would be here and the front would be here.

MS. GANN: Okay.

MR. BABCOCK: Marvin, this is one of the houses that you've built on your lots?

MR. ROSENZWEIG: Yes, in the earlier stages, we don't even build this one anymore, doesn't even, it's a lot smaller than the other ones.

MR. REIS: The front of the house would face here?

MR. ROSENZWEIG: The front of the house would face here.

MR. BABCOCK: Going to face Independence Drive.

MS. LOCEY: In the picture, which is Independence?

MR. ROSENZWEIG: That's it right there.

MS. LOCEY: With the stripe?

MR. ROSENZWEIG: Yes, no, that's, yes, that's Independence.

MS. LOCEY: So the back of the proposed house would face the garage, the back of the house you propose to build would face?

MR. ROSENZWEIG: I have to get my bearings straight.

MR. BABCOCK: Yeah, that appears to be a house on lot 11, you're correct.

MS. LOCEY: Front's here, back is towards this existing dwelling?

MR. ROSENZWEIG: Exactly.

MR. REIS: And to minimize your or eliminate the variance the house would be considerably much smaller than the rest of the homes?

MR. ROSENZWEIG: In that particular facility.

MR. BABCOCK: To make it smaller, it wouldn't be in the character of the neighborhood with the rest of the homes there.

MR. REIS: Thank you. Any other questions? Hear a motion?

MR. BROWN: Make a motion that we set up Mt. Airy Estates for a public hearing request for 17 foot rear yard setback for a proposed house at 2029 Independence Drive in an R-3 zone.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

MT._AIRY_ESTATES_(05-56) _____

Mr. Marvin Rosenzweig appeared before the board for this proposal.

MR. REIS: Request for 17 ft. rear yard setback for proposed single family house at 2657 Liberty Ridge in an R-3 zone.

MR. ROSENZWEIG: Pretty much the same thing again, requesting the 17 foot variance and in this case the house is a little bigger, it's more like 2,350 in terms of the square footage but again keeping with the size of the houses in the neighborhood, it is smaller than most of the houses in the neighborhood in that particular area which is only a block away from the one that we just did before.

MR. REIS: Again, no easements or utility easements or right-of-ways?

MR. ROSENZWEIG: No and this one the driveway and the house both face Liberty Ridge and not Independence.

MR. REIS: Mike, we have all the setbacks okay for the corner lot?

MR. BABCOCK: Yes.

MR. REIS: Questions board? I'll hear a motion.

MS. GANN: Make a motion that we set up Mt. Airy Estates for the request for the 17 foot rear yard setback for proposed single family house at 2657 Liberty Ridge in an R-3 zone.

MR. BROWN: Second the motion.

ROLL CALL

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MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

CLEO_GUALTIERI_(MINUTEMAN_TAVERN)_(05-57)

MR. REIS: Request for existing tractor trailer box to be used for storage purposes and request for 48 sq. ft. for total all signs for existing free standing pole sign at 171 Temple Hill Road in a C zone.

Mr. Nicholas Gualtieri appeared before the board for this proposal.

MR. REIS: Tell us what you want to do.

MR. GUALTIERI: I'm actually Nick, his son, representing him tonight.

MS. MASON: I do have a proxy in the file.

MR. GUALTIERI: Request for a trailer box that was installed on the property 11 years ago which is right now used for cooler space.

MR. REIS: Let's handle the trailer box first and then we'll get into the sign, okay, how long has the trailer box been there?

MR. GUALTIERI: For 11 years.

MR. REIS: It's not going over any easements or utilities or right-of-ways?

MR. GUALTIERI: No, sir.

MR. REIS: And that's just dry storage?

MR. GUALTIERI: It's half refrigerated half dry, yes, pretty much our main source of cooler space.

MR. REIS: You really need it.

MR. GUALTIERI: Oh, yeah, big time, it's where we keep

most of our beer and our food.

MR. REIS: Mike, it doesn't appear but we've got plenty of side yard here.

MR. BABCOCK: Yes, there's no problems with the setback, Mr. Chairman, what the issue is is that Cleo told me that it was a trailer box and in our code, the code says that you cannot use a trailer box for any storage purposes and that's why they're here tonight. It's been there for 11 years, there should be pictures, if there's pictures.

MR. REIS: Yes.

MR. KRIEGER: Now this trailer box it's just a box off the wheels?

MR. GUALTIERI: Yes, oh yeah.

MR. KRIEGER: It's sitting there?

MR. GUALTIERI: Yes.

MR. KRIEGER: You can't hook up a tractor trailer and tow it away?

MR. GUALTIERI: No, sir, we made sure that it blended in with the building nicely, planted bushes, sidewalk, got a fence separating the back of the building for any entrance to get into the trailer.

MS. LOCEY: Get into the trailer from the building or--

MR. GUALTIERI: Well, from the back parking lot.

MS. LOCEY: Not from the interior of the building itself?

MR. GUALTIERI: Right.

MR. KRIEGER: Now there are no members of the public that use this trailer box, it's strictly for you guys, right?

MR. GUALTIERI: Yes, employees and us of course, yes.

MR. REIS: Michael, not to put you on the spot, but can you elaborate on the code? Just says no trailers?

MR. BABCOCK: Yeah, there's an accessory structure code and it basically says that you cannot use a trailer box, you know, and a lot of people were doing that, taking old tractor trailers, just using them for storage purposes and they made a regulation I think in 1986 that says you cannot use a trailer for storage purposes and other than him admitting that he had this thing, I didn't even know that it was there.

MR. KRIEGER: How is it attached to the building?

MR. GUALTIERI: It's attached to the building, it's kind of hard to explain.

MR. KRIEGER: Is it freestanding or is it--

MR. GUALTIERI: See how it's flush up against the exterior building right here?

MR. KRIEGER: Flush against the exterior?

MR. GUALTIERI: Yes, when you walk through the door right here, you pretty much walk in through the trailer and inside the building that's why this roof comes into play.

MR. KRIEGER: There's no space between the trailer and the building?

MR. GUALTIERI: Absolutely not.

MR. REIS: Have you had any complaints from your neighbors formally or informally?

MR. GUALTIERI: No, no.

MR. BABCOCK: You don't know that this thing is there.

MR. REIS: Right, this is in the rear of the building?

MR. GUALTIERI: Yes.

MR. BABCOCK: Yes.

MR. KRIEGER: What I would suggest, Mr. Chairman, is that the application be amended to ask for an interpretation before a variance to determine whether this trailer box is defined in the code as there appears to be enough difference, it's not like he just parked it in the parking lot.

MR. REIS: Almost like an accessory building that's been there for a long time.

MR. KRIEGER: Well, if it's attached to the building.

MS. LOCEY: Storage room.

MR. KRIEGER: Yeah, if it's attached to the building.

MR. KRIEGER: It may have once had wheels and been a trailer box but the question is now is it a trailer box as defined in the code.

MR. BROWN: Where is the refrigeration inside?

MR. GUALTIERI: Inside the trailer box.

MR. BABCOCK: We sent him here tonight for an area variance, I think what Mr. Krieger's saying is to set

him up for a public hearing for an interpretation and/or area variance.

MR. KRIEGER: Failing that an area variance.

MR. BABCOCK: Right, if the board interprets that this is not a box trailer, just an addition to the building then he, that's the interpretation if they feel the interpretation would be that it is a box trailer then he would need an area variance to have that box trailer there.

MS. LOCEY: So having a box trailer is not considered a non-conforming use, something that's--

MR. BABCOCK: Right now I'm telling him he cannot have that box trailer there, that the code says he cannot have it there, you know, and it says with or without wheels, so, I mean, I've read it a few times because only like I said he admitted that it was a box trailer and I knew it was one and I read it quite a few times before I told him that he had to come here to seek relief of that.

MS. LOCEY: Box trailer is not a permitted use and if this board determines it's not a box trailer as defined in the code that eliminates that problem?

MR. BABCOCK: That's correct.

MS. LOCEY: If this board decides that it is a box trailer, it's still not a permitted use, why would an area variance be needed?

MR. BABCOCK: Well, it's just like it's, a shed's not permitted in this area, you get an area variance to put the shed there, it's, you know, the sheds are not permitted in the front yard of a house, can't project closer to the street than the principal building, same thing as this he can appeal my decision to this board

and receive a variance to keep it that way.

MS. LOCEY: Okay.

MR. KRIEGER: So when you come back bring pictures, a picture of the other side of the trailer box would be helpful and looking right along the building so you can see that it's attached.

MR. GUALTIERI: Mike, I'm not sure but did my father give you like four or five pictures of it?

MR. BABCOCK: Just what's there.

MS. MASON: One of the building, one of the sign.

MR. GUALTIERI: I know he took five or six of every single angle.

MR. REIS: Just bring us those.

MR. BABCOCK: This is not going to hold you up, just change the paperwork on my part.

MR. GUALTIERI: I'll make sure that he gets those pictures.

MR. KRIEGER: Something so the board can see there's no space between the trailer and the building.

MR. GUALTIERI: Right, absolutely.

MR. REIS: Let's take care of the sign then we'll take a motion. Okay, request for 48 square foot total of all signs for existing freestanding pole sign. Okay, how long has the sign been there?

MR. GUALTIERI: Eighteen years.

MR. REIS: Again, no complaints formally or informally

from your neighbors?

MR. GUALTIERI: No.

MR. BABCOCK: Mr. Chairman, on the sign we also feel that going back in the file we can't find any paperwork, everybody was doing this, if you notice in the '90s they're attaching the sign that used to be on little trailers that they'd roll out the changeable letters and they attached them to the bottom of their sign. I think that when he put this sign up if he would have got the proper paperwork at the time he wouldn't need a variance but today's code does not allow this as far as the square footage. That's why he's here.

MR. REIS: Thank you very much. Existing sign is that lighted?

MR. GUALTIERI: Yes, existing sign is lighted, yes.

MR. KRIEGER: Interior light, steady illumination?

MR. GUALTIERI: Yes.

MR. REIS: Non-flashing?

MR. GUALTIERI: Non-flashing.

MR. REIS: I'm trying to picture this, this is obviously in the front yard, it doesn't get in the way of traffic as far as sight?

MR. GUALTIERI: As far as pulling out of the parking lot, no, absolutely not.

MR. KRIEGER: How about motorists on the roadway right there in front?

MR. GUALTIERI: No.

MR. KRIEGER: Again when you come for the public hearing pictures as a motorist would see it on the roadway would be helpful for the board to show that it doesn't interfere.

MR. GUALTIERI: Coming north on 300?

MR. KRIEGER: Yes.

MR. BABCOCK: Basically stand on the road in front of your business and take a picture down 300 showing how far it is off the road.

MR. REIS: And where you have it parked, it's not over any easements or right-of-ways, utility easement?

MR. GUALTIERI: No.

MR. REIS: Any other questions? All right, can we get a motion please? You have the language for that?

MS. LOCEY: I'll offer a motion to schedule a public hearing on the application of Cleo Gualtieri for a request for his existing tractor trailer box to be used for storage purposes and/or an interpretation that it is a tractor trailer box according to the definition in the code and also his request for a 48 foot square foot for total all signs for an existing freestanding pole sign at 171 Temple Hill Road in a C zone.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

CUMBERLAND_FARMS_(05-58)

MR. REIS: Request for variance from Section 300-73 (B)(3) which limits expansion of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint at corner of Caesar's Lane and Route 94.

Richard Olsen, Esq. appeared before the board for this proposal.

MR. OLSEN: Good evening, my name is Rich Olsen from McCabe & Mack, counsel for Cumberland Farms. The proposal that we have presented to your planning board is for a raise and rebuild of the existing Cumberland Farms. There's a small block building in the front of the parcel as we have operated since 1975 along with the canopy that sits right on the front property line. Proposal is to prepare a new construction for a modern store, increase the tank capacity with new tanks, increase the pumping capacity. We have been advised by the Town engineer that because of the current location of the curb cut, we have to move this further down Caesar's Lane because of the safety concerns accessing Route 94. We have done that which does necessitate moving the building further back because of the circulation that we have to get through here. We're going to be on a line with a store that's directly to the west of us, our rear line will be further away from the property line than the store which is to the west of us. We recognize that there's an issue of the fact that there's residences behind us. We have worked to preserve trees. There's an existing significant buffer which will extend up to the rear of the store. Right now, we'll be leaving 30 foot and we'll be working with the planning board for additional screening in here. It's our understanding that under your standard the plan as presented will show the setbacks and you will make the determination as to whether the expansion would be permitted.

MR. REIS: This increase, Mike, falls within the side, rear yards?

MR. BABCOCK: Well--

MR. OLSEN: That as I understand it is the issue, they don't have any rear or side yards for this particular use, it's a non-conforming use in the professional office district, therefore, the proposal as we have presented it will detail the rear and side yards that we're seeking and that if you permit the expansion those will be the maximum rear and side yards, obviously subject to their review as to the layout.

MR. REIS: This is your proposed layout?

MR. OLSEN: Correct.

MR. REIS: How far back is the building from the rear yard?

MR. OLSEN: Building sits approximately here.

MR. REIS: Proposed?

MR. OLSEN: Twenty-five feet off our rear line, there's a mature forest that extends beyond the property line to the residences in the rear.

MR. REIS: That darkened area, not the green, is that wooded?

MR. OLSEN: This is wooded area here, right now this is where we propose to do additional landscaping, this is where the grading is going to have to be for the building, this is wooded, it's a hatched line here but that's on the other property.

MR. REIS: Theoretically, this is a tremendous

increase.

MR. OLSEN: Under your code, we can go to 2,027 square feet.

MR. REIS: 2000?

MR. OLSEN: 2,027 just on the expansion, if we had to stick to the code, 3,600 is basically one of the smaller size stores, they were originally looking at 4,200 which is the new quote unquote standard. Obviously, that would be much more difficult to fit on here, the 3,600 is then the size store that they try to place on these properties, make them economically viable to do the work.

MS. GANN: How many gas pumps?

MR. OLSEN: Two existing and this is six, they're setting the pumps further back, the existing canopy sits right on here, our property line.

MR. REIS: Will the vehicles be pulling in perpendicular to the new store?

MR. OLSEN: Pulling in facing the store so the circulation would hopefully be bringing them out.

MR. REIS: This is not, I'm just curious, the two openings on Route 94, they're still going to exist?

MR. OLSEN: These exist and our, the advice to us was the curb cut on Ceasar's would be changed because the DOT in addition to the Town has been trying to pull the curb cuts further down on the Town roads.

MR. REIS: Your proposed building doesn't conflict with easements, right-of-ways, utilities?

MR. OLSEN: No.

MR. KRIEGER: Mr. Chairman, if I may, one of the things that concerns me legally and it's a concern, it's not a decision either way or I don't have any feelings just a question as to whether or not this is something that's subject to variance under 267?

MR. OLSEN: I raised that issue with your Town engineer who indicated that I believe he'd discuss it with the Town attorney, the procedure followed in this Town has been that the presentation is made as an expansion of the non-conforming use because there are no set setbacks to be used.

MR. KRIEGER: I understand that the planning board engineer is an engineer, I have the honor and obligation of advising this board and I think they expect me to exercise my independent judgment.

MR. OLSEN: We would be happy to make the necessary applications if somebody would tell us what the standards are for the setbacks that we'd need.

MR. KRIEGER: I'm not concerned about the setbacks, I understand that because there are no setbacks for a pre-existing, non-conforming use.

MR. OLSEN: Asking for the standards under 267B?

MR. KRIEGER: Whether it permits the board to vary that.

MR. OLSEN: I had that one time, the question, I believe I have case law on the non-conforming use.

MR. KRIEGER: That's one of the reasons I gave you the card because you can send it directly to me in advance.

MR. OLSEN: Sure, I'd be happy to do that.

MR. KRIEGER: Because I'd like to put any legal concern to bed.

MR. REIS: What's the light area on the left, my left?

MR. OLSEN: This is the underground storage tanks, they're going to be replaced.

MR. REIS: Any questions?

MR. BABCOCK: Mr. Chairman, what we have done in the past is we have asked the applicant to supply us with the information for where a proposed structure like the one permitted so if it's permitted in a C zone or NC zone how far I think they exceed those measurements anyway but I think this board would be, it would help this board in its decision to know that if this was a proper zone since it's non-conforming, does it meet the zoning and the current setbacks, I think the Town of New Windsor came up with a set, with the setbacks because of the use not because of the zone and I think if a gas station is allowed anywhere in the Town of New Windsor it should meet the same criteria as where it's allowed to be.

MR. REIS: Does this proposal meet those requirements?

MR. BABCOCK: I don't have that in front of me but I think it exceeds those but I think it would be to their benefit to show this board that they do meet that criteria for where a gas station would be permitted.

MR. REIS: Thank you, Mike.

MR. BABCOCK: As we know, the gas station down the street that was in here last time the rear yard setback was 15 feet, they're proposing 25 I know that one, the side yard here, the one front yard is 92 feet, the other side yard is 88 feet.

MR. REIS: Seems to be a lot of room.

MR. BABCOCK: Yeah.

MR. OLSEN: Our lot size fortunately we do have a large enough lot to deal with.

MR. REIS: What's the size of the property?

MR. OLSEN: It's an acre, it's 1.05 acres.

MR. REIS: To stay within the code that doesn't exist for this non-conforming use would it be economically feasible for you to do 100 percent rather than 127 percent, would that make sense?

MR. OLSEN: That would be approximately 3,200 square feet, we can explore that.

MR. REIS: I throw that out as a compromise not because it might be necessary just as a thought.

MR. OLSEN: In preparation for the hearing before the board we can go through and do that analysis and then we'd have to talk to the number crunchers in Massachusetts to figure out what works.

MR. REIS: We understand. Any other questions, folks? Can I hear a motion? Mike, wait a minute, is there anything else you can add?

MR. BABCOCK: No.

MS. LOCEY: I'll offer a motion to schedule a public hearing on the application of Cumberland Farms for their request for a variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30 percent while the applicant is seeking approval for 127 percent increase in the footprint at the corner of Caesar's Lane and Route 94 in a PO zone.

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MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

ANGELINA_COLONI_(FOR_ANTHONY_&_ROSE_DAMIANO)

MR. REIS: Request for 17 ft. side yard setback for existing 8 ft. x 20 ft. breezeway attached to existing garage at 39 Hillside Avenue in an R-4 zone.

Ms. Margaret Coloni and Ms. Angelina Coloni appeared before the board for this proposal.

MS. M. COLONI: I'm Margaret Coloni here representing my mother, Angelina Coloni. My grandparents built their home approximately in the '50s. Approximately 20 years ago, they connected the garage to the house and made a closed breezeway. I was informed by the building department that the side property line from the garage to the side is approximately 5.8 feet which doesn't meet the code, we are requesting a variance for this.

MR. BABCOCK: The garage is non-conforming, that's where the five feet is, it's been there since 1955, by attaching the house to the garage, the setback becomes a requirement becomes 20 feet so therefore that's why they're here tonight, the garage was an accessory structure now that it's attached to the house it's a principal structure.

MR. REIS: Thanks, Mike.

MS. LOCEY: The breezeway is now enclosed?

MS. M. COLONI: Yes.

MR. REIS: What brings you to the board?

MS. M. COLONI: We're in the process of selling the home and waiting for a closing date we need to come get this.

MR. REIS: You have not had any formal or informal

complaints about this structure?

MS. M. COLONI: No.

MS. A. COLONI: It's just a walkway. When my dad passed away, it was basically done for her convenience and feeling safe when she got out of the car and walked into the kitchen. So there's no furniture, just a step and you walk in and you go in, no one has ever complained that we know of.

MR. REIS: Thank you. As far as you know, it's not over any easements or right-of-ways or utility lines?

MS. M. COLONI: No.

MR. REIS: Folks have any questions? It's been there a long time, obviously, has it created any water hazards or runoffs?

MS. M. COLONI: No.

MS. GANN: Accept a motion?

MR. REIS: Yes.

MS. GANN: I'll make a motion we set up Angelina Coloni for a request for 17 foot side yard setback for existing 8 x 20 foot breezeway attached to the existing garage at 39 Hillside Avenue.

MR. BROWN: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

PUBLIC HEARINGS: _____

FRANK PUCCIO (05-43) _____

Mr. Frank Puccio appeared before the board for this proposal.

MR. REIS: Request for existing shed, 8.5 ft. side yard setback, 7.8 ft. rear yard setback, existing pool & deck, 2 ft. rear yard setback and existing dwelling & deck, 22 ft. rear yard setback. Tell us what you want to do.

MR. PUCCIO: Well, I'd like to make everything legal.

MR. REIS: Good.

MR. PUCCIO: That's about it, that's all I want take to accomplish.

MR. REIS: What brings you to the board after all these years?

MR. PUCCIO: Well, years ago we were, I was a young guy and moved up here, tell you the truth, I didn't know I needed a permit for all these things, we built houses and decks.

MR. REIS: You gotta go to jail.

MR. PUCCIO: That's the deal, I want to get it legal anyway.

MR. REIS: Have you had any complaints about any of these structures?

MR. PUCCIO: No.

MR. REIS: From your neighbors?

MR. PUCCIO: No.

MR. REIS: None of the structures go over any utility easements, right-of-ways, things like that?

MR. PUCCIO: No.

MR. KRIEGER: They don't go over, don't go anywhere close to anything?

MR. PUCCIO: No, everything's on my property, nobody else's property.

MR. REIS: These are all existing, have they created any water hazards or runoffs, ponding?

MR. PUCCIO: No.

MR. REIS: Did you say how long the shed and deck and pool have been there?

MR. PUCCIO: I think you asked me that the first time over 20 years.

MR. REIS: A lot of this is repetition of your first preliminary meeting but we have to go over these things for the record.

MR. PUCCIO: Okay.

MR. REIS: To move the shed so it conforms to the zoning code that would be a major problem for you?

MR. PUCCIO: Yes, that's true, nowhere to put it, that's one of the biggest problems, the lots are very small in New Windsor.

MR. REIS: Folks have any questions before we open it up to the public?

MS. LOCEY: I don't.

MR. BROWN: No.

MR. REIS: We'll open it up to the public, anyone here to speak for or against it or any questions about it? We'll close the public hearing. Any other questions folks? Can I hear a motion?

MR. BROWN: I'll make a motion that we grant Frank Puccio variances for existing shed, 8.5 ft. side yard setback and 7.8 rear yard setback, existing pool & deck, 2 ft. rear yard setback and existing dwelling and deck, 22 ft. rear yard setback all at 118 Glendale Drive.

MS. GANN: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

JOHN_MOWBRAY_(05-52) _____

MR. REIS: Request for 24 ft. side yard setback for existing deck at 318 Beattie Road in an R-1 zone.

Mr. John Mowbray appeared before the board for this proposal.

MR. REIS: Tell us what you want to do.

MR. MOWBRAY: I'm looking for a variance on the deck I built about 15 years ago.

MR. REIS: Deck hasn't caused any water hazards or ponding?

MR. MOWBRAY: No.

MR. REIS: Did you have to cut down any substantial vegetation?

MR. MOWBRAY: No.

MR. REIS: Does it go over any easements, right-of-ways?

MR. MOWBRAY: No, sir.

MR. REIS: Have you had any complaints about this structure from your neighbors?

MR. MOWBRAY: No, no, sir.

MR. REIS: You're selling your property, that's what brings you here?

MR. MOWBRAY: That's correct, sir.

MR. KRIEGER: The deck is immediately adjacent to an exit from the house, is that correct?

MR. MOWBRAY: Yes, it's a two tiered deck, there's a deck off the back.

MR. KRIEGER: And a person exiting the house would be likely to sustain serious physical injury if the deck weren't there?

MR. MOWBRAY: Absolutely.

MR. REIS: Any questions before we open it up to the public?

MS. LOCEY: What's this white pipe?

MR. MOWBRAY: That's from my leader, my gutter, it's a gutter, it's from the leader pipe running down the side of the house.

MR. REIS: John, is this deck consistent or similar to the other decks in the neighborhood?

MR. MOWBRAY: Yes, it is.

MR. REIS: All right, we'll open it up to the public, anyone here for this application?

MR. MCKEAN: I just have a question, I'm his next door neighbor, Andrew McKean, when it says a 24 foot setback, that's the amount of variance you're giving cause it's 40 feet off the line so you're just saying since it's only 16 feet that he's allowed to have the extra 24, is that what it means?

MR. BABCOCK: That's correct.

MR. REIS: He doesn't have the adequate distance so he's asking to vary the zone.

MR. MCKEAN: This only applies to the existing

structure, so if the person who buys this decides they want to modify it, they have to conform to the new existing code?

MR. MOWBRAY: I think what he's asking if they take the deck down and put a new deck up they would have to go through the same thing.

MR. REIS: That's correct.

MR. MCKEAN: That's all I wanted to know, just wanted to clarify.

MR. REIS: If they're going to extend beyond its current size.

MR. MCKEAN: If they tear it down.

MR. REIS: If they tear it down for the exact same size.

MR. BABCOCK: They just get a building permit.

MR. REIS: If they want to expand beyond its current depth, they'll have to get an additional variance.

MR. MCKEAN: Let me just clarify, if they tear it down, can they build something up to the 16 foot off the line?

MR. REIS: Yes.

MS. LOCEY: They could replace it with a newer version of the same size, not bigger, so it wouldn't get closer to the road or side yard.

MR. MCKEAN: Just goes right by my driveway, I don't have a problem with John, you know.

MR. REIS: Do you have a thought as to if you're in

favor of it or you don't like the idea?

MR. MCKEAN: I don't have a problem with it.

MR. REIS: Thank you, sir. Anyone else? All right, we'll close the public hearing. Board, any other questions? I'll accept a motion.

MS. GANN: I'll offer a motion that we grant John Mowbray's request for 24 foot side yard setback for existing deck at 318 Beattie Road.

MR. BROWN: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

MICHAEL_MC_GOVERN_(05-44)

Mrs. Arlene McGovern appeared before the board for this proposal.

MR. REIS: Request for interpretation and/or use variance for single family dwelling with two kitchens or a two family dwelling at 122 Birch Drive in an R-3 zone. Tell us what you want to do.

MRS. MC GOVERN: There's an existing downstairs kitchen and in the bottom of the house that we purchased the house that way so we're looking to make it legal.

MR. REIS: How long have you owned the house?

MRS. MC GOVERN: Since 1997.

MR. REIS: What brings you to the board?

MRS. MC GOVERN: We're looking to sell it.

MR. REIS: Is your separate kitchen is it utilized as an apartment?

MRS. MC GOVERN: No, the intention would be to have one family but one family living downstairs, one family living upstairs.

MR. KRIEGER: One family, part of it living downstairs, part of it living upstairs?

MRS. MC GOVERN: Right. When we moved in the intention was to have his parents stay with us while we were upstairs.

MR. REIS: And at this point in time?

MRS. MC GOVERN: Nobody's there.

MR. REIS: It's vacant, you don't really use it as a second living area?

MRS. MC GOVERN: That's correct. Well, family room, that kind of stuff.

MR. REIS: You have one heating system, one electric meter for the whole house?

MRS. MC GOVERN: That's correct.

MR. KRIEGER: It's a single family house, it's always been a single family house, you'll market it as a single family house to all people?

MRS. MC GOVERN: We'll market it as a mother-in-law apartment.

MR. REIS: In our world, there's no such thing.

MRS. MC GOVERN: Understood.

MR. REIS: For the sake of your marketing, if I may suggest, market it as a single family home with a second kitchen. I wouldn't expand on that. You don't want to cause an ambiguous situation with the potential buyer.

MRS. MC GOVERN: Okay.

MR. REIS: Town of New Windsor will not allow a two-family home in this zone.

MRS. MC GOVERN: Okay.

MR. REIS: Any questions right now? We'll open it up to the public. Is there anyone here that wishes to speak on this pro or con? No? We'll close the public hearing. You folks have any questions? Your downstairs is there, there's no locked doors between

your main living space and the apartment that was for your folks?

MRS. MC GOVERN: No locked doors.

MS. LOCEY: You can go from one to the other without having to go outside of the building?

MRS. MC GOVERN: Right, when you come in, there's an upstairs and there's a downstairs through the front door, there's a side entrance that you can come through on the side of the house but when you come in the main entrance of the house you go upstairs and downstairs.

MR. REIS: We like you to provide no means of completely separating that area from the main living area, we'd like it to be open.

MRS. MC GOVERN: There's a door on the bottom of the stairs, is that a problem or--

MR. REIS: Michael, can you help us with this?

MR. BABCOCK: Well, the door doesn't really matter, you can have a door on every room, I think it's the, a locked door would be a problem basically when you have--

MRS. MC GOVERN: With a key?

MR. BABCOCK: It can't lock. Basically what you have is what the chairman had said is a single family house two kitchens where if in the summertime you want to cook in the basement because it's cooler and in the wintertime you want to cook upstairs.

MRS. MC GOVERN: It's been great for holidays.

MR. BABCOCK: Basically you can't market it as a mother-daughter or there's no such thing, it's a two

family or one family, and if you rent downstairs out that can be a problem, that's what you're here for tonight. If you were, the people that buy or the people that buy it decide to rent the basement out, you're going to go on record tonight that that's not going to happen so we'll have that in the file in case they do we can violate them for doing that.

MRS. MC GOVERN: Okay, the realtor did market it as a mother-daughter when they put it up originally.

MR. BABCOCK: Which they would because that's what they see, what they see is what they market it for.

MR. REIS: So you don't have a problem, straighten that language out, that's what we're suggesting that that person is not going to be in violation of our rules and regulations of the Town and the neighbor complains and they have to come here and we have to turn them down, okay, so straighten that out.

MR. KRIEGER: The definition of family in the New Windsor Town Code allows it, those related by blood or marriage, so it would allow, there's no need to say mother-daughter, you know, mother anything because that's part of the definition, it's allowed as Mr. Babcock come said it's a single family or it's a two family and this board wants to make sure that you're not going to use it as a separate rental apartment to a non-related person.

MRS. MC GOVERN: No and I spoke to our attorney that we have and I did say that I wanted to make sure that everything was straightened out before we go through so it would it be appropriate for me to tell him that they have accepted the dwelling as a single family with two kitchens and only--

MR. KRIEGER: Just make sure that the contract says single family as is.

MRS. MC GOVERN: Okay.

MR. REIS: We'll determine that need if it's going to be appropriate.

MRS. MC GOVERN: Okay.

MR. REIS: Any other questions? Can I hear a motion?

MS. LOCEY: I will offer a motion regarding the application of Michael McGovern that the dwelling at 122 Birch Drive which is in an R-3 zone be interpreted as a single family dwelling with two kitchens.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

MARILYN_THOMPSON_(05-46)

Ms. Marilyn Thompson appeared before the board for this proposal.

MR. REIS: Request for interpretation and/or use variance for single family dwelling with two kitchens or a two family dwelling at 10 Barclay Road. Tell us what you want to do.

MS. THOMPSON: I just want to be able to leave my downstairs kitchen in place. The house is exactly the way it was when we bought it and I just want to be able to leave it there. It showed up as a violation on my assessor's card, I guess after I grieved my taxes a few years ago, you know, it's always just been, you know, something that we use part of the house, unfortunately, I have a huge family, we have a bar down there, like a big family room and we use the one room as like an extra, just like an extra room and then one is like full of junk which I'd really like to kind of clean up but there always seems to be more junk.

MR. REIS: So you're utilizing this space for your own family?

MS. THOMPSON: Yes.

MR. REIS: You're not renting this out to another party?

MS. THOMPSON: No, I've got five kids and four grand kids, nieces and nephews.

MR. REIS: What brings you to the board at this point?

MS. THOMPSON: Because I refinanced my mortgage and it showed up as a violation so I have to get it straightened out.

MR. REIS: As you heard with the last--

MS. THOMPSON: I didn't hear, actually, I was way in the back.

MR. REIS: Just a quick review in this zone the Town does not allow two family dwellings, the best you could hope for is that they, the board will pass your request to have two kitchens in a single family home, that this could never be sold as a two family or no such thing as a mother-daughter situation.

MS. THOMPSON: No.

MR. KRIEGER: It's a single family house, it will always be a single family house, it's always been a single family house, you'll always hold it out to others as being a single family house?

MS. THOMPSON: Yes, it was sold to me as single family house.

MR. KRIEGER: Well, all I just said is correct, right?

MS. THOMPSON: Yes, it's basically, I don't know if you, it's a very big house, very big and when you walk into the back yard by the time you get into the yard you're down one flight. So my basement is actually in the kitchen area, we have french doors that open and there's a patio there and an inground pool so it's relevant because otherwise, if I'm upstairs and we have like when we had my son's 30th birthday party, it would be going down a whole flight of stairs with everything to get to the yard. So we always have just, you know, it's been great to use down there for that purpose.

MR. REIS: Thank you. Any questions before we open it up to the public? Is there anyone here in the audience that would like to speak on this? We'll close the public hearing. Board, any questions at this time?

The house is heated by a single furnace?

MS. THOMPSON: I have, I used to have two furnaces for different zones.

MR. KRIEGER: It's one system?

MS. THOMPSON: Yeah.

MR. KRIEGER: This isn't on a separate?

MS. THOMPSON: No, everything feeds together.

MR. REIS: One electric meter?

MS. THOMPSON: It's only one meter. Unfortunately, I don't have any air conditioning down there.

MR. REIS: The space that contains the two kitchens there's no locking door that's separating that from the rest of the home?

MS. THOMPSON: No, we have a door at the head of the stairs that I have like a, to keep the cat litter pans downstairs and downstairs there's another door that doesn't, like it doesn't even have a doorknob on it.

MR. REIS: We go on record strictly for the record that this is a single family home, will always be represented as a single family home and you understand that and if you should decide to sell this tomorrow that you will represent it to others as a single family home?

MS. THOMPSON: Being a real estate agent for 14 years, I get the drill, yeah, I kind of know that.

MR. REIS: Thank you, Marilyn. Any other questions? Can I hear a motion, please?

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MR. BROWN: Make a motion that we grant Marilyn Thompson's request for a variance for interpretation and/or use variance for a single family dwelling with two kitchens or a two-family dwelling at 10 Barclay Road in an R-4 zone.

MR. REIS: We're going to make this as an interpretation as a single family, not any variance.

MS. LOCEY: I'll second that motion.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

FORMAL DECISIONS

1. Exxon
2. Couser
3. Stuetzle
4. Guerrero
5. Schulze
6. Ciero
7. Welch

MR. REIS: Formal decisions, can we get a vote on the formal decisions?

MS. LOCEY: I'll offer a motion that the formal decisions as detailed on the agenda for the September 12, 2005 New Windsor Zoning Board of Appeals meeting be accepted as presented.

MS. GANN: Second it.

ROLL CALL

MS. GANN	AYE
MS. LOCEY	AYE
MR. BROWN	AYE
MR. REIS	AYE

Respectfully Submitted By:

Frances Roth
Stenographer (9/13/05)